Supreme Court, U.S.
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NO. 95-1375

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

FRANCIS L. GILL,

PETITIONER,

- vs -

TERRITORY OF GUAM,

RESPONDENT.

On Petition For Writ of
Certiorari To The United States
Court of Appeals For The Ninth Circuit

BRIEF IN REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JERRY E. HOGAN
HOGAN & LINK, P.C.
104 Reflection Center
222 Chalan Santo Papa
Agana, Guam 96910

Counsel for Petitioner.

18 pp

QUESTION PRESENTED

Petitioner states that private and public lands were defined and distinguished in the Treaty of Paris of 1898. The disputed parcels were implicitly defined in the Treaty as subject to private uses and claims. There is no evidence in the record that these lands were later acquired by the United States of America or statutorily conveyed by the United States to the Government of Guam. The record is further devoid of any United States statute amending the Treaty and authorizing the Government of Guam to acquire or claim ownership of the property. The Government of Guam therefore has no legal authority to claim

the lands as its own or to extinnguish Petitioner's rights of adverse posseession or possession by occupancy, or prescription.

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Francis L. Gill ("Petitioner") hereby responds to the Respondent's Brief in Opposition to Petition for Writ of Certiorari.

Petitioner states that:

(a) The question presented to this

Court has been implicitly ruled upon below;

(b) That Petitioner has identified an important federal question and merits certiorari;

(c) Petitioner relies on accurate facts in the presentation of its Petition; and

(d) Petitioner's analysis is correct and the charges against him should not have been brought.

STATEMENT OF THE CASE

The distinction between public and private lands as defined in the Treaty of Peace of 1898 was implicitly passed upon by Judge Weeks in the Superior Court below.

This implicit presentation and review continued in the District Court of Guam Appellate Division and in the Ninth Circuit Court of Appeals.

ARGUMENT

1. The question presented was implicitly reviewed below.

Petitioner's position that the Treaty of Paris of 1898 ("Treaty") prevents the Territory of Guam from bringing the charges was implicitly ruled upon in the courts below.

Judge Weeks, the Superior Court judge, implicitly relied upon the Government of Guam's sovereign authority to establish its uncontestable interest in the disputed property. The judge wrote:

> Therefore the Government need not have had absolute title to the land, as long as it had an interest in it. That the Government may have some title, although not absolute, to the land in question, despite its

> lack of Certificate of Title, is clear. This can be demonstrated through an examination of Guam's adverse possession statutes. The adverse possession statutes, as they relate to the same subject matter, must be construed together. (Citation omitted). One statute provides that one cannot gain title through adverse possession to land which has already been registered. 21 G.C.A. Section 29136. <u>However, Government claims present a special case.</u>

Petitioner's Appendix "D", Judge Weeks Decision and Order of May 12, 1992 at p.4. (Emphasis Added).

This implicit reliance on the sovereign authority of the Government of

Guam to establish an uncontestable interest in the land was reinforced and expanded by the District Court of Guam Appellate Division ("Appellate Division") and the Ninth Circuit Court of Appeals ("Ninth Circuit"). The Appellate Division took judicial notice of 21 Guam Code Ann. Sec. 1202 placing ownership of all land without an owner of record with the Government of Guam (Respondent's Brief Appendix A at p.A-13). The Ninth Circuit also relied on this section. People of the Territory of Guam v. Gill, 61 F.3d 688, 693 (9th Cir. 1995).

The courts below implicitly concluded that the Government of Guam's sovereign authority to claim ownership to the land at issue was uncontestible and Petitioner had no right to make adverse claims against that interest. The Government of Guam was not required to

show that its claimed ownership interests were derived from land defined as public in the Treaty or obtained pursuant to any United States law amending the Treaty. An issue which must necessarily have been passed on is properly raised. Illinois v. Gates, 462 U.S. 213, 222 (1983).

Moreover, the issues relating to ownership of the disputed property were central to the litigation, and therefore, the record below relating to ownership issues has been fully developed.

2. Petitioner has presented an important Federal Question for review by this Court.

The important Federal Question presented is the supremacy of the United States of America's Treaty commitments over the Government of Guam's "authority to control land within its boundaries".

(See, Respondent's Motion for Extension of Time in Which to File Brief in Opposition at p.3).

Additionally, the interpretation of the extent of the United States Treaty commitments not to impair private property rights in Guam is an important federal question. Important federal questions that should be, but have not been settled by this court, may be properly reviewed. Rules of the Supreme Court of the United States Rule 10(c).

The question presented "may have significant implications for the island of Guam". (See, Respondent's Motion for Extention of Time in Which to File Brief in Opposition). The implications of this Petition may also extend to the island of Puerto Rico. (Treaty of Peace, Article II).

3. Petitioner accurately stated the facts on which his Petition relies.

a. The record is accurately stated.

Neither the Organic Act of Guam, on which Respondent relies, nor any other United States statute transferred ownership of the disputed property to the Government of Guam. 48 U.S.C. 1421f. The record is also devoid of any statutory basis for any governmental action to convert the disputed real property to public ownership.

A treaty can only be modified by a subsequent treaty or statute. Ribas v. U.S., Puerto Rico, 24 S.Ct. 727, 194 U.S. 315, 48 L.Ed. 994.

b. Petitioner accurately states Guam law.

Under Guam law, any ownership interest or claim may be brought under the Land Registration Title Act. 21 Guam

Code Ann. Sec. 29105. However, a land owner in Guam cannot claim registered title until a registration has been completed and a certificate of title issued. 21 Guam Code Ann. Sec. 29132.

4. Petitioner's legal analysis is well founded.

The Government of Guam begins and ends its legal analysis of the ownership of the disputed property by concluding "no private person has been permitted to claim land for which there is no previous owner." (Respondent's Brief in Opposition at p.5). Respondent concludes it therefore must own the disputed lands.

This reasoning is faulty and ignores the effects of the Treaty on land ownership rights in Guam. It also ignores the effect of the Treaty on the Government of Guam's authority to claim ownership of land recognized as subject

to private uses and rights by the United States.

Ultimately, the Government of Guam's legal analysis, despite claims to the contrary, extinguishes all private rights to use the disputed property or to acquire title to them through adverse possession, prescription or occupancy.

Thus, a correct ownership analysis must begin with the Treaty and follow a chain of title to its current ownership.

5. The private character of the real property at issue is relevant to the validity of Petitioner's convictions.

Real property which can be possessed adversely or by prescription or occupancy cannot be stolen by an adverse claim of ownership. If the real property at issue is subject to the private property protections of the Treaty, then, Petitioner cannot be punished for

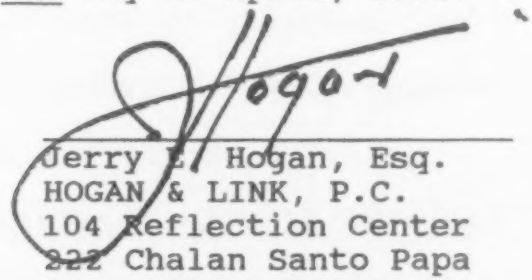
exercising these rights.

Thus, if the Government of Guam unlawfully acquired the disputed property, it could not, by this unlawful acquisition, extinguish Petitioner's right to use the property or adversely possess them.

CONCLUSION

For the reasons stated above, the Petition for Writ of Certiorari should be granted.

Dated this 11 day of April, 1996.



Jerry E. Hogan, Esq.
HOGAN & LINK, P.C.
104 Reflection Center
~~222~~ Chalan Santo Papa
Agana, Guam 96910
Tel: (671) 472-8067
Fax: (671) 472-2957

Counsel for Petitioner.

CERTIFICATE OF SERVICE

I, JERRY E. HOGAN, a member of the Bar of the Supreme Court of the United States and counsel of record for Francis L. Gill, the Petitioner herein, hereby certify that on April 12, 1996, pursuant to Rule 29, Rules of the Supreme Court, I caused three (3) copies of the foregoing Brief in Reply to Opposition to Petition for Writ of Certiorari to be served on Andrew Artero-Boname, Assistant Attorney General, Respondent's counsel of record, by hand delivering said copies to Suite 2-200E, Guam Judicial Center, 120 West O'Brien Drive, Agana, Guam 96910.

All parties required to be served have been served.

Dated this 12 day of April, 1996.

JERRY E. HOGAN
HOGAN & LINK, P.C.
104 Reflection Ctr.
222 Chalan Santo Papa
Agana, Guam 96910